



March 18, 1999

Mr. Homero G. Martinez
City of Laredo
P. O. Box 579
Laredo, Texas 78042-0579

OR99-0765

Dear Mr. Martinez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122811.

The City of Laredo Police Department (the "department") received a request for information related to a certain discipline review board finding. You have supplied the responsive information for our review.¹ You contend that it is excepted from public disclosure by sections 552.101, 552.102 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Assuming that the City of Laredo is a "civil service municipality," section 143.089 of the Local Government Code is applicable. Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or

¹We note that the submitted information includes medical records. Disclosure of such records is governed by V.T.C.S. art. 4495b, §5.08, (the Medical Practice Act).

police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 916 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *Id.* at 949. Information maintained by the department which relates to an investigation that does not result in disciplinary action must be withheld from required public disclosure under section 552.101 of the act in conjunction with section 143.089(g) of the Local Government Code. However, if the internal affairs investigation did result in disciplinary action, then "any record, memorandum, or document relating to" the disciplinary action must be placed in the personnel files maintained by the civil service commission under section 143.089(a) and must be released by the civil service commission under section 143.089(f) of the Local Government Code. In this case, the internal investigation did not result in disciplinary action. The information in the subject internal investigation file must therefore be withheld from required public disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.² Further, section 143.089(g) requires a police department who receives a request for information maintained in a file under that subsection to refer that person to the civil service director or the director's designee; you indicate that you have complied with this requirement.

You contend that the submitted documentation from a criminal investigative file of department is excepted from disclosure by section 552.108(a) of the Texas Open Records Act. Section 552.108(a)(2) of the Act excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." You relate that this case was referred to the Webb County District Attorney's office and was subsequently no billed by a Grand Jury. After reviewing the records at issue, we conclude that you have met your burden of establishing the applicability of section 552.108(a)(2) with regard to this documentation and that most of the information contained in this criminal investigation file may be withheld.

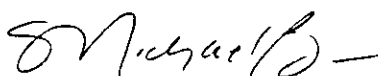
Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). The

²We note that the submitted information includes documentation from a criminal investigative file. We are not of the opinion that section 143.089 applies to such information.

department must release these types of information from the included incident reports to the requestor in accordance with *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Burns", followed by a horizontal line.

Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref:: ID# 122811

Enclosures: Submitted documents

cc: Ms. Patricia Guerra
3220 E. Kearney
Laredo, Texas 78043
(w/o enclosures)